U.S. Senate
Republican Policy
Committee

Larry E. Craig, Chairman
Jade West, Staff Director

Legislative Notice

Editor, Judy Gorman Prinkey

No. 96

September 25, 1998

S. 2400 — Trade and Tariff Act of 1998

Calendar No. 517

Reported July 31, 1998, by the Senate Committee on Finance, an original bill without amendment, by a vote of 11-1 (Senator Conrad voting nay). (The Committee does not count proxy votes in the total vote on a motion to order a bill reported. Voting aye by proxy were Senators Hatch, D'Amato, Murkowski, Nickles, Mack, Graham, and Kerrey, and voting nay was Moseley-Braun.) S. Rept. 105-280.

NOTEWORTHY

- The Senate may begin consideration of S. 2400 — which includes renewal of the President's "fast track" trade authority — during the week of September 28, 1998.
- The House of Representatives began consideration of its trade bill, H.R. 2621, today, September 25.
- Because revenue measures must originate in the House, the Majority Leader may move to proceed to H.R. 1432, the African Growth and Opportunity Act (which passed the House on March 11, 1998, by a vote of 233-186), in lieu of S. 2400; the motion to proceed may be accompanied by a cloture petition. Upon beginning action on H.R. 1432 (or another House-passed vehicle), the Majority Leader would move to substitute the text of S. 2400 for the House measure.

HIGHLIGHTS

S. 2400 is a comprehensive trade initiative that includes:

- Providing certain tariff preferences to the countries of sub-Saharan Africa and the Caribbean Basin, and to renew the Generalized System of Preferences;

- Renewing the President's authority to proclaim changes in tariffs resulting from the negotiation of reciprocal trade agreements and to renew congressional procedures for implementing provisions of such agreements in U.S. law (known as "fast track" procedures);

- Reauthorizing existing trade adjustment assistance programs;

- Introducing a mechanism for investigating foreign barriers to American agricultural exports;

- Implementing an international agreement imposing disciplines on shipbuilding subsidies; and

- Making changes to miscellaneous trade and tariff provisions.

S. 2400 is divided into seven titles, some of which incorporate legislation previously reported favorably by the Finance Committee.

Title I establishes a new program of trade preferences for the countries of **sub-Saharan Africa** in order to encourage investment and trade in one of the poorest regions in the world. Title I also renews the existing **Generalized System of Preferences (GSP)** program and affords additional trade benefits to the eligible beneficiary countries under the **Caribbean Basin Economic Recovery Act.**

Title II would renew the **President's authority to proclaim changes in U.S. tariff schedules** resulting from the negotiation of reciprocal trade agreements. Title II would also renew congressional procedures for implementing any changes to U.S. law required by an international trade agreement achieving the objectives established by Congress. These provisions are generally known as **"fast track"** procedures. (For background on "fast track," see Background, below.)

Title III reauthorizes existing **trade adjustment assistance** programs without modification for a two-year period. Those programs include (1) trade adjustment assistance for workers displaced by import competition, (2) trade adjustment assistance for firms facing a significant adjustment due to increased import competition, and (3) trade adjustment assistance programs established in conjunction with the North American Free Trade Agreement (NAFTA). Those programs would expire on September 30, 1998, in the absence of reauthorization.

Title IV creates a new mechanism for highlighting and potentially investigating **barriers to U.S. trade in agricultural products.** Title IV is intended to expand access to foreign markets for U.S. agricultural products.

Title V incorporates legislation implementing the **Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry** negotiated under the auspices of the Organization for Economic Cooperation and Development. With minor modifications, Title V reflects legislation reported favorably last year by both the Finance and Commerce Committees.

Title VI would extend normal trade relations to **Mongolia** on a permanent and unconditional basis. Title VI would also make various **miscellaneous changes** to the U.S. tariff laws, including suspending certain duties on wool fabric and on certain articles brought to the United States by athletes and trainers participating in the Olympics and other world sporting events, expanding a trade program for United States insular possessions, allowing the importation of gum arabic (chiefly from Sudan, which is subject to economic sanctions) and extending current duty drawback rules to materials used in the construction or equipment of certain mobile offshore drilling units.

Title VII adds two further **revenue provisions.** One would expand the definition of vessels qualified for capital construction fund treatment. The other would modify the period allowed for carryback and carryover of the Foreign Tax Credit.

BACKGROUND

The following gives background on Title II, which relates to Reciprocal Trade Agreements (i.e., the "fast track" provisions). Brief background on other titles of S. 2400 is found below in the summary of bill provisions.

Constitutional Authority on Foreign Trade

Article I, section 8, clause 2 of the Constitution gives Congress the power to regulate foreign commerce. Congress historically has exercised that power through legislation regulating imports of goods, services, and investment into the United States.

Beginning with the Reciprocal Trade Agreements Act of 1934, Congress delegated authority to the President to proclaim changes in U.S. tariffs, within prescribed limits, based on the results of mutually beneficial trade agreements concluded with our foreign trading partners. Congress set the overall objectives of the negotiation but offered the President and our trading partners the assurance that, if the agreement reached were consistent with the objectives and conditions set by Congress, the agreement would be implemented in U.S. law. The result was significant reductions in both foreign and U.S. tariffs. As tariff levels fell, particularly after the Kennedy Round of tariff negotiations concluded in 1967, it became clear that future rounds of trade talks would focus on the panoply of nontariff measures (for example, tax and regulatory practices) that our trading partners used to bar or inhibit U.S. exports from reaching their markets.

This recognition, in turn, posed a problem in terms of the implementation of any agreement that called for a reciprocal reduction in U.S. nontariff measures limiting imports of foreign goods, services, and investment. In the view of the Finance Committee, Congress could not, consistent with its constitutional responsibilities, delegate authority to the President to revise U.S. domestic law by proclamation in the manner it had delegated the authority to proclaim changes in tariffs. At the same time, Congress recognized that the President, as a practical matter, might be unable to conclude future trade agreements unless he could assure our trading partners that the agreement would not be amended by Congress after the fact.

The Trade Act of 1974: "Fast Track" Procedures

Accordingly, Congress introduced in the Trade Act of 1974 provisions now known as the "fast track" procedures for implementing trade agreements. These procedures, referred to in S. 2400 as the "trade agreement approval procedures," were designed to preserve Congress's constitutional role in the regulation of foreign commerce, while offering the President and our trading partners the assurance that a trade agreement requiring changes in U.S. law would receive an up-or-down vote within a time certain when brought before Congress. However, those procedures were not designed and were never intended to provide a means to revise the fundamental objectives and contours of U.S. domestic law.

Consistent with the approach established by the 1934 Act, Congress set the President's negotiating objectives in the 1974 Act. It obliged the President to notify Congress prior to entry into any trade agreement, consult on the nature and scope of the accord, and submit the President's findings as to how the pact met the objectives set by Congress, together with legislation needed to implement the agreement in U.S. law.

Congress has preserved the basic structure of the 1974 Act each time it has renewed the trade agreement approval procedures. The procedures were renewed once for eight years by the Trade Agreements Act of 1979, and a second time for five years in the Omnibus Trade and Competitiveness Act of 1988. The authority granted by the 1988 Act was extended in 1993 for an additional six months in order to complete the Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT). It has not been renewed since it expired in early 1994.

Fast track authority has been used on five occasions: to implement the Tokyo and Uruguay Rounds of GATT multilateral trade negotiations, in 1979 and 1994 respectively; to implement free trade accords with Israel in 1985 and Canada in 1988; and to implement the NAFTA in 1993.

BILL PROVISIONS

Title I — Trade and Development

Subtitle A — Trade Policy for Sub-Saharan Africa

This subtitle is based on the trade-related provisions of the House-passed African Growth and Opportunity Act (H.R. 1432), with certain modifications. The purpose of this legislation is to authorize a new trade and investment policy that is designed to encourage increased trade and economic cooperation between the United States and the sub-Saharan African (SSA) countries. The Finance Committee believes that the increased trade and investment resulting from this legislation will encourage those sub-Saharan African countries committed to political and economic reform to continue to pursue such reforms.

This subtitle has four primary components. First, this subtitle provides eligible SSA countries with enhanced benefits under the Generalized System of Trade (GSP) program. (For more on GSP, see Subtitle B, below.) Second, this subtitle provides those countries quota-free and duty-free access to the United States for certain textile and apparel products. Third, this subtitle directs the President to create a United States-Sub-Saharan African Trade and Economic Cooperation Forum. Fourth, this subtitle directs the President to examine the feasibility of negotiating a free trade agreement with one or more of the SSA countries.

Subtitle B — Generalized System of Preferences

Subtitle B reauthorizes the GSP program through June 30, 2008, for beneficiary developing countries in sub-Saharan Africa and through December 31, 2000, for all other beneficiary developing countries. The GSP program, established in title V of the Trade Act of 1974, as amended, grants authority to the President to provide duty-free treatment to imports of eligible articles from designated beneficiary developing countries, subject to certain conditions and limitations. To qualify for GSP benefits, each beneficiary country is subject to various mandatory and discretionary eligibility criteria. Import-sensitive products are ineligible for GSP. The President's authority to grant GSP benefits expired on June 30, 1998.

Subtitle C — United States-Caribbean Trade Enhancement

Subtitle C authorizes the grant of additional trade preferences available under the United States-Caribbean Basin Trade Enhancement Act (CBERA), which was enacted in 1983 to respond to an economic crisis in Central America and the Caribbean. The principal U.S. response to that crisis under CBERA was a broad grant of unilateral tariff preferences to qualifying beneficiary countries. In order to qualify, the beneficiary country had to request the opportunity to participate, and the President then determined whether the country was eligible based on a variety of factors, including the extent to which a country's economic policies would contribute to President Reagan's Caribbean Basin Initiative (CBI).

The original grant of preferences was limited to a period of 12 years. It covered virtually all trade with the CBI countries with the exception of textiles and apparel, canned tuna, petroleum and petroleum products, and certain watches and watch parts, handbags, luggage, flat goods such as wallets, change purses and key and eyeglass cases, work gloves, and leather wearing apparel. The current CBI beneficiaries include Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, and the British Virgin Islands.

In 1990, Congress passed the Caribbean Basin Economic Recovery Expansion Act of 1990, the so-called "CBI II." That Act made the unilateral grant of preferences permanent. It also expanded the tariff preferences. In 1993, the United States, Canada, and Mexico signed the NAFTA. Among the commitments made by the United States to Mexico were the sharp reduction in duties and quantitative limits applicable to products ineligible for CBI treatment, including textiles and apparel. Subtitle C of title I in S. 2400 is intended to afford CBI beneficiaries treatment akin to that afforded Mexican products in order to avoid undermining investment in the Caribbean Basin based on preferences previously available under the CBI.

Like the CBI II, enacted in 1990, this legislation would expand the existing CBI by providing for additional tariff preferences on a number of products not previously covered by the program. Those benefits, however, are conditioned on the eligible beneficiary countries' trade policies, their participation and cooperation in the Free Trade Area of the Americas (FTAA) or other comparable trade initiatives, as well as certain non-trade factors provided for in the legislation.

Title II — Reciprocal Trade Agreements

Title II extends tariff proclamation authority and fast track procedures for congressional consideration of trade agreements (see Background, above). This title is almost identical to S. 1269, the Reciprocal Trade Agreements Act of 1997, reported by the Finance Committee on October 8, 1997. (For further details, see RPC's Legislative Notice No. 45, 10/31/97). That bill was debated on the Senate floor for several days in November 1997, with votes of 69-31 and 68-31 on cloture on the motion to proceed and on the motion to proceed, respectively. (See 105th Congress, 1st Session, Vote Nos. 292 and 294.)

The legislative provisions under this title fall into three categories:

- Sections 2002 and 2003 address the nature, purpose, and scope of the authority granted in this bill. Section 2002 sets out the purposes for which the implementing procedures in section 2003 are provided, specifies the principal trade negotiating objectives on which Congress expects the President to focus in future trade negotiations for which such procedures may be used, and identifies complementary international economic objectives that would reinforce the trade negotiations process. Section 2003 includes two separate implementing procedures, one allowing the President to proclaim changes in U.S. tariffs resulting from trade agreements reached with our foreign trading partners, and another establishing a set of trade agreement approval procedures for congressional review of implementing legislation needed to make changes in U.S. law other than tariff changes (i.e., the fast track). Section 2003 also defines what types of measures would qualify for expedited congressional review.

- Sections 2004 and 2005 contain the procedural aspects of the measure, including those provisions intended to strengthen Congress's role in and oversight of the trade negotiations process. Section 2004 sets out the notice and consultation requirements, which require the President to notify the Congress of the initiation of negotiations and the potential entry into an agreement and obligate the President to consult at every stage of the process. Section 2005 sets out the implementing procedures themselves, including provisions allowing for congressional disapproval of negotiations under certain circumstances.

- Sections 2006 through 2008 set out various provisions that are integral to the operation of the legislation or reinforce the principal purpose of this title. Those include the waiver of notice requirements for negotiations already under way, as well as definitions and conforming amendments.

Title III — Trade Adjustment Assistance

This title extends the authorization of three Trade Adjustment Assistance (TAA) programs through September 30, 2000. (Without reauthorization, all three programs expire on September 30, 1998.) These three programs were authorized in Title II of the Trade Act of 1974, as amended, for the purpose of providing assistance to individual workers and firms that are adversely affected by the reduction of barriers to foreign trade. Those programs include:

- The general TAA program for workers, which provides training and income support for workers adversely affected by import competition;

- The TAA program for firms, which provides technical assistance to qualifying firms; and.

- The NAFTA program for workers (established by the North American Free Trade Agreement Implementation Act of 1993), which provides training and income support for workers adversely affected by trade with or production shifts to Canada and/or Mexico.

Title IV — Market Access Identification for Certain Agricultural Products

Title IV establishes a mechanism for identifying countries that deny market access to U.S. agricultural products and for investigating and eliminating such barriers. It incorporates S. 219, which was introduced on January 28, 1997, by Senators Daschle and Grassley, except it would expand the product coverage from the value-added agricultural products covered under S. 219 to include all U.S. agricultural commodities and products, including forest products, fish, and seafood.

Title IV establishes a mechanism for identifying countries that deny market access to U.S. agricultural products and for investigating and eliminating such barriers. This mechanism is modeled on the so-called Special 301 procedures that have proved successful in improving protection of American intellectual property rights in foreign markets and similar procedures that have proved successful in gaining market access for U.S. exports of telecommunications equipment and services.

[NOTE: "Special 301" refers to procedures originally introduced into the U.S. trade laws by the Omnibus Trade and Competitiveness Act of 1988. Those procedures were designed to identify countries that denied protection to or posed particular problems for the enforcement of U.S. intellectual property rights (e.g., lacked basic laws against patent infringement or failed to enforce existing laws against software piracy). Under the Special 301 procedures, countries that pose significant problems for holders of U.S. intellectual property rights are added to a list of potential targets for investigation and potential retaliatory action under section 301 of the Trade Act of 1974.]

Title V — Approval and Implementation of OECD Shipbuilding Agreement

Title V would approve and implement the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry (the "Shipbuilding Agreement"), resulting from negotiations conducted under the auspices of the Organization for Economic Cooperation and Development (OECD). Title V incorporates the provisions of the OECD Shipbuilding Trade Agreement Act, S. 1216, as reported by the Senate Committee on Finance on September 24, 1997, and by the Senate Committee on Commerce, Science and Transportation on November 10, 1997, with a few minor modifications.

The Shipbuilding Agreement establishes a mechanism for the determination of injurious pricing in the construction and sale of seagoing vessels, in a manner analogous to the provisions in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994 (called the WTO Antidumping Agreement). In addition, the Shipbuilding Agreement provides for the assessment of an injurious-pricing charge and countermeasures where appropriate — remedies that are different from the antidumping provisions under Title VII of the Tariff Act of 1930, as amended, which implements the WTO Antidumping Agreement in U.S. law. Because ocean-going vessels engaged in international trade are technically not imported or entered for consumption in the United States, it is not possible to use the antidumping remedies of Title VII of the 1930 Act to cover the sale of vessels at less than fair value. Accordingly, separate statutory authority is required to implement the Shipbuilding Agreement.

Section 5102 of S. 2400 would establish a new Title VIII of the Tariff Act of 1930, as amended, in order to create an injurious-pricing mechanism applicable to shipbuilding. This mechanism would permit the collection of an injurious-pricing charge against ocean-going vessels sold to U.S. buyers at a price below normal value when that sale injures a U.S. shipbuilding industry. This mechanism also allows for the imposition of countermeasures against a shipyard that fails to pay the injurious-pricing charge. The new Title VIII would be analogous to the current antidumping provisions of Title VII of the 1930 Act, which set forth procedures under U.S. law for assessment of antidumping duties. The specific injurious-pricing provisions differ from the antidumping provisions in Title VII of the 1930 Act only where necessary to take into account differences between the Shipbuilding Agreement and the WTO Antidumping Agreement due to the unique characteristics of the construction and sale of ocean-going vessels. The new Title VIII would also provide for judicial review of injurious pricing and countermeasures determinations in the U.S. Court of International Trade, with subsequent appellate review in the U.S. Court of Appeals for the Federal Circuit.

This title of S. 2400 also includes provisions relating to a duty exemption for some repair costs, modifications in certain tax and subsidy programs under the Merchant Marine Act of 1936, a bar of private lawsuits under the Shipbuilding Agreement, and procedures for presidential and congressional withdrawal from the Shipbuilding Agreement.

Title VI — Miscellaneous Trade and Tariff Provisions

This title consists of two subtitles which, respectively, extend Normal Trade Relations to Mongolia and miscellaneous provisions.

Subtitle A authorizes the extension of permanent Normal Trade Relations — formerly called Most Favored Nation (MFN) status— tariff treatment to imports from Mongolia. This includes termination of the application to Mongolia of Title IV of the Trade Act of 1974, widely known as the Jackson-Vanik amendment.

Subtitle B consists of several provisions relating to the duty treatment of certain fabrics; the temporary suspension of duties for the personal effects of participants in the Olympics and other world athletic events; expansion of a production incentive program for U.S. insular possessions; the importation of gum arabic from Sudan; and the duty drawback rules relating to inputs used in the manufacture of certain mobile offshore drilling units.

Title VII — Revenue Provisions

This title consists of two sections. Section 7001 expands the definition of vessels qualified for capital construction fund treatment under section 7518 of the Internal Revenue Code to be consistent with the provisions under Title V of S. 2400 relating to implementation of the Shipbuilding Agreement. Section 7002 modified the carryback and carryover periods for the excess foreign tax credit.

ADMINISTRATION POSITION

At press time, the Administration had not sent a formal Statement of Administration Policy on S. 2400. The Administration has repeatedly indicated its support for passage of a trade bill — and, in particular, renewal of the president's fast track authority — but in recent weeks has opposed efforts to bring a bill to the floor in either house.

COST

The Committee Report includes both Committee and Congressional Budget Office (CBO) estimates for implementation of S. 2400. These estimates are as follows by fiscal year in millions of dollars (shown Committee estimate/CBO estimate, but note that CBO did not provide estimates for years beyond 2003:

FY 1999 — (-$469 million)/(-$436 million);
FY 2000 — (-$4 million)/$39 million;
FY 2001 — $168 million/$185 million;
FY 2002 — $344 million/$347 million;
FY 2003 — $337 million/$337 million;
FY 2004 — $302 million;
FY 2005 — $188 million;
FY 2006 — $186 million;
FY 2007 — $178 million.

REGULATORY IMPACT

The Committee estimates that enactment of S. 2400 would, for most provisions, impose no additional paperwork requirements on individuals or businesses. Certain provisions expanding voluntary programs would entail additional paperwork for those choosing to avail themselves of the program. In the Committee's estimation, S. 2400 would have little impact on personal privacy. Certain of its provisions which require the filing of certain information with the U.S. government in order to demonstrate eligibility for certain tax or tariff benefits would potentially subject accounting records to review by the government agency administering the program. S. 2400 would not impose a federal intergovernmental mandate on state, local, or tribal governments.

POSSIBLE AMENDMENTS

Unknown. Exempt wool from Title VI provisions relating to duty treatment of certain fabrics.

Harkin. To treat child labor in foreign countries as an unfair trade practice.

Reid. Modify trade objectives under Title II.

Staff contact: Jim Jatras, 224-2946